

Moreover, as discussed above, AT&T has an incentive under price cap regulation not to discourage toll fraud. Thus, it is not surprising that AT&T is the most ardent advocate of the carriers' unconscionable and contradictory toll fraud policies. AT&T nonetheless utterly fails to explain or justify the disparate treatment of toll fraud liability in its tariffs and the other discriminatory practices it utilizes in resolving toll fraud disputes.

First, the record clearly establishes that AT&T tariff provisions are not uniformly clear about the obligation to pay for charges resulting from fraudulent toll use. While the tariff provisions at issue in the Pacific Mutual Petition are largely silent regarding toll fraud liability, AT&T does notify Tariff 12 customers of the allocation of obligations connected with toll fraud. The Commission should certainly be concerned that AT&T has chosen to disclose toll fraud obligations only to its Tariff 12 customers and not to customers of other business communications services, who typically do not and cannot engage in negotiations with AT&T regarding the terms and conditions of the service offerings they use. As is obvious, AT&T chooses to address the toll fraud liability issue in a selective fashion that is apparently most advantageous to it, given its private business agenda.

Second, AT&T fails to address its discriminatory treatment of customers victimized by toll fraud who have calling cards vis-a-vis those who are victimized by the misuse of other inward dialing features. That is, the limit of toll fraud liability of customers using an AT&T calling card is \$50.00, while those who do not use calling cards are subject to unlimited liability.<sup>16</sup> However, a number of commenters who were also remote access toll fraud victims indicated that AT&T persuaded them to utilize remote access features instead of other alternatives, such as calling cards.<sup>17</sup> By not clearly and uniformly informing its customers of their toll fraud obligations under various tariffed services, AT&T prevents its customers from making an informed choice regarding the use of credit card services or alternate services. AT&T thereby fraudulently shifts the liability for toll fraud in excess of \$50.00 to its customers if its legal theories are accepted by the FCC. The Commission should not be an accomplice to such manipulation of the unsuspecting public.

Third, AT&T fails to respond adequately to claims that it enforces its tariff provisions in a discriminatory manner by selectively prosecuting some cases while abandoning

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<sup>16</sup> Comments of Chartways Technologies, Inc. at 3.

<sup>17</sup> E.g., Comments of Mitsubishi International Corporation at 2.

others. Although AT&T disputes treating its customers victimized by toll fraud in a discriminatory fashion, the fact that AT&T has chosen to settle some toll fraud disputes, while litigating others, clearly shows that the carrier has undertaken to decide unilaterally what amount to assess a customer for toll fraud liability.<sup>18</sup> According to AT&T, a customer's ultimate liability for toll fraud charges apparently is inversely proportional to its ability to afford the costs of litigating toll fraud charges in court. The inevitable disparities in payment for toll fraud charges between larger and smaller customers arising from this policy makes AT&T's discriminatory settlement practices unreasonable and unlawful under the Communications Act.<sup>19</sup>

AT&T's further claim that it unilaterally decides not to pursue some claims where it determines it is at fault is similarly suspect. One commenter has shown that AT&T has pursued collection of fraud charges even where the calls originated from a country to which the customer never ordered service.<sup>20</sup> Another claims that AT&T misled the customer into believing it was merely experiencing billing errors that

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<sup>18</sup> See AT&T Comments at 8-11.

<sup>19</sup> 47 U.S.C. § 202(a).

<sup>20</sup> Comments of Credit Card Calling Systems, Inc., at 5.

would soon be remedied.<sup>21</sup> Obviously, such arbitrary and standardless decisionmaking does not comport with the requirements of the Communications Act.

#### IV. CONCLUSION

The record in this proceeding demonstrates that the Commission should take definitive action to address the growing problem of toll fraud abuse. Specifically, the Commission should declare the carrier practices described above to be unjust, unreasonable, and discriminatory in violation of the Communications Act. Such a measure by the Commission would serve the public interest as a general proposition, as well as address numerous complaints that are currently pending before the agency. It is also the first step required before the Commission can establish comprehensive policies and guidelines that stimulate carrier initiatives for toll fraud prevention, encourage prompt remedial action by carriers, clarify limitations on customer liability, and impose notification and disclosure requirements.

This proceeding provides the Commission the opportunity to establish uniform policies and guidelines and to address toll fraud issues consistent with the realities of the current telecommunications environment. The Commission may

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<sup>21</sup> Complaint of The Perkin-Elmer Corporation at 5.

also wish to institute further proceedings, including a rulemaking proceeding, to adopt more detailed procedures in order to encourage carriers to address seriously the growing problem of toll fraud.

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April 30, 1991

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I hereby certify that on this 30th day of April, 1991, I caused copies of the foregoing "REPLY COMMENTS OF AERONAUTICAL RADIO, INC." to be mailed via first-class postage prepaid mail to the following:

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